

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ROBERT EARL CLAYBORNE JR.,

Plaintiff,

vs.

PARKER, Officer, #1577, Individual  
Capacity; JAMES, Sgt, #1370,  
Individual Capacity; CHAD HEIN,  
Officer, #1552, Individual Capacity;  
RIPLEY, Officer, #1256, Individual  
Capacity; MESSERSMITH, Officer,  
#1568, Individual Capacity;  
KOUNOVSKY, Officer, #1593,  
Individual Capacity; and  
SUNDERMEIER, Captain, #717,  
Individual Capacity;

Defendants.

**8:17CV481**

**MEMORANDUM  
AND ORDER**

This matter is before the court on Plaintiff's Motion to Stay ([filing no. 41](#)) and Offer of Judgment pursuant to Federal Rule of Civil Procedure 68 ([filing no. 42](#)), which was docketed as a motion.

On February 22, 2019, Defendants filed a Motion to Dismiss Plaintiff's Amended Complaint ([filing no. 30](#)) and a brief ([filing no. 31](#)). Plaintiff filed his brief in opposition ([filing no. 37](#)) on March 5, 2019, and Defendants filed a reply brief ([filing no. 40](#)) on March 14, 2019. On March 15, 2019, Plaintiff filed the present Motion to Stay ([filing no. 41](#)) and Offer of Judgment ([filing no. 42](#)) asking the court "to stay this court's judgment on the defendants['] motion to dismiss plaintiff's amended complaint until the defendants has [sic] responded to the plaintiff's offer of monetary judgment under FRCP 68." ([Filing No. 41.](#)) Plaintiff's

settlement offer seeks entry of judgment in his favor along with \$158,100.00 in damages against Defendants. ([Filing No. 42.](#))

Defendants have not responded to Plaintiff's Offer of Judgment and nothing in the record indicates that the offer has been accepted. As the deadline for Defendants' response has long passed, the court will deny Plaintiff's request for a stay and will consider Plaintiff's Offer of Judgment withdrawn. *See* Fed. R. Civ. P. 68(b). Defendants' Motion to Dismiss is considered fully submitted and ripe for disposition.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion to Stay ([filing no. 41](#)) is denied.
2. The court considers Plaintiff's Offer of Judgment ([filing no. 42](#)) withdrawn. The clerk of court is directed to terminate the motion event associated with the Offer of Judgment ([filing no. 42](#)).

Dated this 10th day of May, 2019.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge